

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,

Plaintiff,

- against -

FEDEX FREIGHT, INC. and
EXPEDITORS INTERNATIONAL OF
WASHINGTON, INC.,

Defendants.

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C. A. No. 4:20-cv-_____

COMPLAINT

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), by and through its attorneys Hill Rivkins LLP, as and for its Complaint against the above-named Defendants, alleges upon information and belief as follows:

1. This subrogation action arises from the loss of a Waveserver 2x WaveLogic AI L-Band Terrestrial Base Kit (the “Cargo”), which was intended to be transported by interstate motor carriage from Laredo, TX to Lithia Springs, GA in December 2018.
2. This Honorable Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1337 as this action arises from the transportation of goods by motor carriage governed by 49 U.S.C. § 14706, and the amount in controversy exceeds \$10,000 per bill of lading.
3. Venue is proper pursuant to 49 U.S.C. § 14706(d) as Defendants operate in and through the State of Texas and this District.
4. At all times relevant hereto, Plaintiff National Union was and now is a corporation or other

business entity organized and existing under Pennsylvania law, with an office and principal place of business at 175 Water Street, New York, NY 10038.

5. At all times relevant hereto, Defendant FedEx Freight, Inc. (“FedEx”) was and now is corporation or other business entity organized and existing under Arkansas law, engaged in business as an interstate motor carrier, with an office and principal place of business at 17155 Aaron Brenner Drive, Suite 600, Memphis, TN 38120.

6. Defendant FedEx is registered with the Texas Secretary of State to do business within the state as a foreign business entity (Texas Taxpayer no. 17105620037), and has appointed CT Corporation System, located at 1999 Bryant Street, Suite 900, Dallas, TX 75201, as its registered agent for purposes of service of process pursuant to section 5.201 of the Texas Business Organizations Code.

7. At all times relevant hereto, Defendant Expeditors International of Washington, Inc. (“Expeditors”) was and now is a corporation or other business entity organized and existing under Washington law, engaged in business as an interstate motor carrier and/or freight forwarder, with an office and principal place of business at 1015 Third Avenue, 12th Floor, Seattle, WA 98104.

8. Defendant Expeditors is registered with the Texas Secretary of State to do business within the state as a foreign business entity (Texas Taxpayer no. 19110692480), and has appointed Registered Agent Solutions, Inc., located at 1701 Directors Boulevard, Suite 300, Austin, TX 78744, as its registered agent for purposes of service of process pursuant to section 5.201 of the Texas Business Organizations Code.

9. Defendants FedEx and Expeditors (together “Defendants”) are subject to the personal jurisdiction of this Honorable Court by virtue of transporting, agreeing to transport, and/or arranging the transportation of the Cargo from, through, and within the State of Texas.

10. At all times relevant hereto, Ciena Corporation and Ciena Communications Inc. (together “Ciena”) were and now are telecom networking equipment and software services suppliers headquartered in Hanover, MD, and were the shippers and/or owners of the Cargo.

11. Plaintiff National Union has reimbursed Ciena for the cargo loss at issue pursuant to an insurance claim made under a policy in full force and effect at the time thereof, and thus is subrogated to all of Ciena’s rights, remedies, claims, and causes of action with respect to the Cargo, including those asserted against Defendants herein.

12. Plaintiff National Union brings this action on its own behalf and, as agent and trustee, on behalf and for the interest of all parties who may or be or become interested in the Cargo, as their respective interests may ultimately appear, and National Union is entitled to maintain this action.

13. In or about December 2018, Defendants agreed to transport the Cargo by motor carriage from Laredo, TX to Lithia Springs, GA, in exchange for certain consideration.

14. Thereafter, the Cargo was tendered to Defendants at Laredo, TX in good order and condition and suitable in every respect for the intended transportation, which Defendants received and accepted for transport to destination in Lithia Springs, GA.

15. However, Defendants failed to deliver the Cargo to destination.

16. By receiving the Cargo in good order and condition at origin, and failing to deliver the same to destination, Defendants breached and violated their duties and obligations as motor carriers, freight forwarders, and/or bailees; breached the contract of carriage; were negligent and careless in their handling of the Cargo; and otherwise are at fault for the loss alleged herein.

17. The loss was not caused by any circumstance that would provide a carrier or freight forwarder with a defense or exception to liability, such as inherent vice or an act of God, the public authority, the public enemy, or the shipper.

18. Plaintiff and its subrogor have duly performed all of the duties, obligations, and conditions precedent to be performed on their part, including the submission of a timely notice of claim.

19. By reason of the premises, Plaintiff National Union has sustained damages as nearly as same can now be estimated, no part of which has been paid although duly demanded, in the amount of \$60,826.11.

WHEREFORE, Plaintiff National Union prays: (i) that process in due form of law may issue according to the practices of this Honorable Court against Defendants FedEx and Expeditors, citing them to appear and answer the foregoing; (ii) that judgment may be entered against Defendants FedEx and Expeditors, jointly and severally, in the amount of \$60,826.11, together with costs, interest, and reasonable attorney's fees; and (iii) for such other and further relief as the Court may deem just and proper under the circumstances.

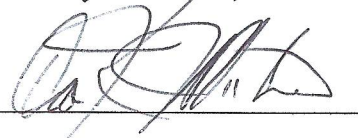
Dated: September 28, 2020

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Respectfully submitted,

By:



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